Supreme Court, U.S.
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No. 98-

IN THE

Supreme Court of the United States
OCTOBER TERM, 1998

JAMES E. PIETRANGELO, II

Petitioner,

v.

UNITED STATES SENATE

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES E. PIETRANGELO, II
Pro Se Petitioner
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April 29, 1999

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QUESTIONS PRESENTED

1. Did at least thirty-two Senators violate Art. I, § 3's Oath Clause, and Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by voting "not guilty" as to the Impeachment Articles in President Clinton's Impeachment Trial even though those Senators clearly and as a matter of public record thought that President Clinton committed (the) acts charged in those Articles?

2. Did all of the Senators violate Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by ordering, adjudging, and communicating a judgment of acquittal in President Clinton's Impeachment Trial even though two-thirds of those Senators thought President Clinton "guilty" as to the Impeachment Articles?

3. Did the District Court err in dismissing Pietrangelo's suit against the Senators -- alleging these violations of Art. I, § 3, and of Art. II, § 4 -- based on Speech or Debate Clause immunity?

PARTIES TO THE PROCEEDING

The petitioner in this case is James E. Pietrangelo, II.

The respondents are Spencer Abraham, Daniel K. Akaka, Wayne Allard, John Ashcroft, Max Baucus, Evan Bayh, Robert F. Bennett, Joseph R. Biden, Jr., Jeff Bingaman, Christopher S. Bond, Barbara Boxer, John B. Breaux, Sam Brownback, Richard H. Bryan, Jim Bunning, Conrad R. Burns, Robert C. Byrd, Ben Nighthorse Campbell, John H. Chafee, Max Cleland, Thad Cochran, Susan M. Collins, Kent Conrad, Paul Coverdell, Larry E. Craig, Michael D. Crapo, Thomas A. Daschle, Mike DeWine, Christopher J. Dodd, Pete V. Domenici, Byron L. Dorgan, Richard J. Durbin, John Edwards, Michael B. Enzi, Russell D. Feingold, Dianne Feinstein, Peter Fitzgerald, Bill Frist, Slade Gorton, Bob Graham, Phil Gramm, Rod Grams, Charles E. Grassley, Judd Gregg, Chuck Hagel, Tom Harkin, Orrin G. Hatch, Jesse Helms, Ernest F. Hollings, Y. Tim Hutchinson, Kay Bailey Hutchison, James M. Inhofe, Daniel K. Inouye, James M. Jeffords, Tim Johnson, Edward M. Kennedy, Robert J. Kerrey, John F. Kerry, Herb Kohl, John Kyl, Mary L. Landrieu, Frank R. Lautenberg, Patrick J. Leahy, Carl Levin, Joseph I. Lieberman, Blanche Lincoln, Trent Lott, Richard G. Lugar, Connie Mack, John McCain, Mitch McConnell, Barbara A. Mikulski, Daniel Patrick Moynihan, Frank H. Murkowski, Patty Murray, Don Nickles, Jack Reed, Harry Reid, Charles S. Robb, Pat Roberts, John D. Rockefeller, IV, William V. Roth, Jr., Rick Santorum, Paul S. Sarbanes, Charles E. Schumer, Jeff Sessions, Richard C. Shelby, Bob Smith, Gordon H. Smith, Olympia J. Snowe, Arlen Specter, Ted Stevens, Craig Thomas, Fred Thompson, Strom Thurmond, Robert G. Torricelli, George Voinovich, John W. Warner, Paul D. Wellstone, and Ron Wyden.

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PETITION FOR A WRIT OF CERTIORARI

James E. Pietrangelo, II respectfully petitions for a writ of certiorari to review his entire case as well as the order of the United States District Court for the Northern District of Ohio, Eastern Division in this case.

OPINIONS BELOW

This case is currently pending before judgment in the Court of Appeals for the Sixth Circuit. The order of the District Court, attached at Appendix, is unreported.

JURISDICTION

On March 18, 1999, the District Court entered an order (docket entry no. 7) dismissing Pietrangelo's case. Pietrangelo timely appealed the order to the Court of Appeals for the Sixth Circuit, where his case is now pending. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); U.S. Sup. Ct. R. 11; and *Duignan v. United States*, 274 U.S. 195, 200 (1927), which allows review of questions not pressed or passed upon below in exceptional cases. Notice of service required by U.S. Sup. Ct. R. 29.4(b) & (c) has been made.

CONSTITUTIONAL PROVISIONS

Art. I, § 3, cl. 6 provides in relevant part that:

> When sitting for that Purpose [Impeachment Trial], they [the Senate] shall be on Oath or Affirmation.

U.S. Const., Art. I, § 3, cl. 6. Art. II, § 4 provides that:

> The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

U.S. Const., Art. II, § 4.

STATEMENT OF THE CASE

This case involves the Impeachment Trial of President Clinton and facts therein which may already be known by this Court. During the Trial, certain Senators publicly stated either that they believed that President Clinton had given false testimony and/or that he had impeded evidence in a judicial proceeding, or that he had committed perjury and/or obstructed justice. On February 12, 1999, immediately after voting "not guilty" as to the Impeachment Articles, thirty-two Senators sponsored a Censure containing numerous statements, including that President Clinton "gave false or misleading testimony and his actions have had the effect of impeding discovery of evidence in judicial proceedings[.]" Because the Senators' public statements and Censure mirrored the Impeachment Articles, which respectively charged that President Clinton "willfully provided perjurious, false and misleading testimony" and "prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding[,]" Pietrangelo filed an amended complaint for declaratory relief against all the Senators on March 4, 1999. Pietrangelo alleged that at least the thirty-two Senators had violated Art. I, § 3's Oath Clause by voting "not guilty" when they in fact believed that President Clinton was guilty, and that all the Senators had violated Art. II, § 4's Duty to Convict and Remove Clause, by ordering, adjudging, and communicating a judgment of acquittal even though two-thirds of the Senate (those who voted guilty plus the thirty-two) in fact believed that President Clinton was guilty. The District Court had jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 2201(a).

On March 18, 1999, the District Court entered an order dismissing Pietrangelo's suit on the basis of Speech or Debate Clause immunity. Pietrangelo appealed the order to the Court of Appeals, arguing that Speech or Debate Clause immunity was inapplicable to

the Senators in his suit because the Senators had violated a constitutional provision affecting separation of powers and there was no one else to sue and no other remedy to seek. The case is now pending in the Court of Appeals.

Due to the exceptional nature of this case, and the imperative public importance of immediately settling these fundamental questions before (more) irreparable harm is done to this Nation, Pietrangelo is petitioning this Court to review his entire case, before judgment in the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The Senators have clearly violated specific provisions of the Constitution.

The Senators have violated provisions that are clearly part of the framework of the separation of powers of our system of government. Co-equality and independence for all three branches -- the Executive, Legislature, and Judiciary -- has been, by definition, undermined.

The Senate undermined the Legislative legitimacy.

The Senate allowed President Clinton -- the Executive -- to be "above the law," because they failed to hold him accountable for his undeniable perjury and obstruction of justice, for which no one else will prosecute him either while he is chief law enforcement officer or afterwards. With President Clinton "above the law," the social contract of democracy that binds all citizens is, by definition, broken. Now that President Clinton is free of the constraints of the law, he is totally above the law, so much so that he did not respond to what any reasonable person would say was a citizen's credible charge of rape against him. This undermines the Executive.

The Judiciary's legitimacy and authority have been seriously undermined. President Clinton conspicuously held himself above the law when he -- a lawyer, former state attorney-general, former constitutional law professor, and chief law enforcement officer --

deliberately (and with a smirk) flaunted judicial laws and decisions. Then, in plain and conspicuous view of this Nation (including its children), the Senators disregarded their constitutional duty and the Constitution when they decided that President Clinton should be "censured" rather than convicted, even though he was guilty of the crimes or facts charged and even though ordinary citizens could not so avoid prosecution. These clear and brazen violations of the Law flaunt and are in contradiction to the principle which this Court has repeatedly and proudly declared as a standard -- that "no man is above the law":

> We have no king to whom [the notion that the king can do no wrong] can be applied. The President, in the exercise of the executive functions, bears a nearer resemblance to the limited monarch of the English government than any other branch of our government, and is the only *individual* to whom it could possibly have any relation. It cannot apply to him, because the Constitution admits that he may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrong-doing, and his removal from office if found guilty.

Langford v. United States, 101 U.S. 341, 343 (1879) (Emphasis in the original);

> Under our system the *people*, who are [in England] called *subjects*, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of the monarch. The citizen here [in the United States] knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered.
>
> * * *
>
> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with immunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are abound to obey it.

> It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

United States v. Lee, 106 U.S. 196, 208, 220 (1882) (Emphasis in the original);

> The doctrine [of a truly independent sovereign] . . . had its origins in the feudal system. * * * Since the King was at the apex of the feudal pyramid, there was no higher court in which he could be sued. The King's immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong.
>
> We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown . . . .

Nevada v. Hall, 440 U.S. 410, 415 (1979).

Unless this Court reviews this entire case, our branches of government will remain broken and our democracy will be in name only. This is not a second bite at the impeachment apple; there never was a first bite, because clearly the Senators unconstitutionally untruly voted that President Clinton was "not guilty." The cost of reviewing this case will clearly be high, but not so high as that of abandoning the principle that "no man is above the law."

This Court must hear this case for the sake of restoring our democratic way of life.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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April 29, 1999

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

James E. Pietrangelo, II,	)	**CASE NO. 1:99 CV 323**
	)	
Plaintiff,	)	**JUDGE PATRICIA A. GAUGHAN**
	)	
vs.	)	
	)	
United States Senate,	)	**Order**
	)	
Defendant.	)	

Plaintiff, James E. Pietrangelo, II, filed this Complaint for Declaratory Relief against the United States Senate, Individually and Together Sitting as a Court of Impeachment, relative to the Impeachment Trial of President William Clinton in the United States Senate. Plaintiff seeks relief in the form of a declaration from this Court that "it would be unconstitutional for a Senator to not vote to convict President Clinton when he or she believes or finds that President Clinton has committed the acts charged. . ." Further, plaintiff requests that "the Court declare that perjury and obstruction of justice are 'high Crimes and Misdemeanors' for which a President may be convicted and removed from office."

Plaintiff filed an Amended Complaint for Declaratory Judgment following the acquittal of President Clinton by the Senate. Plaintiff requests that this Court declare that those Senators who voted to acquit President Clinton did so unconstitutionally and that President Clinton was actually convicted of the charges. Therefore, plaintiff requests that this Court declare that the Senate "should have ordered and adjudged that President Clinton was convicted."

The Speech or Debate Clause of the United States Constitution, Article I, Section 6, Clause 1, provides that "The Senators and Representatives shall. . .for any Speech or Debate in either House. . .not be questioned in any other Place." This "separation of powers safeguard secures against executive or judicial interference the processes of the nation's elected representatives leading up to the formation of legislative policy and the enactment of laws." *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir. 1985) (citations omitted). This Clause "extends absolute immunity to members of Congress for 'voting. . ." *Id.* The Clause, "designed to preserve the independence and integrity of the Legislative Branch, has been read broadly to effectuate its purposes, including within its protective sweep those activities which are generally done in a session of the House by one of its members in relation to the business before it." *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976), citing *United States v. Johnson*, 383 U.S. 169 (1966) and *Kilbourn v. Thompson*, 103 U.S. 168 (1880).

Pursuant to the Speech or Debate Clause this case is hereby dismissed.

IT IS SO ORDERED.

/signed/

PATRICIA A. GAUGHAN
United States District Judge